

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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)	
Amendment of the Commission's Part 90 Rules)	WT Docket
No. 06-49		
In the 904-909.75 and 919.75-928 MHz Bands)	
)	

***Ex Parte* Presentation**

Progeny LMS, LLC ("Progeny"), respectfully submits the following *ex parte* presentation to the Commission in response to a July 20, 2006 *ex parte* presentation filing by Warren C. Havens, Telesaurus Holdings, GB, LLC, Telesaurus, VPC, LLC (collectively, "Havens") in Wireless Telecommunications Docket No. 06-49 ("WT No. 06-49"). Progeny submits that Havens' filing is procedurally flawed and not germane to the above-captioned rulemaking proceeding.

Havens' *ex parte* presentation contains Havens' Petition for Reconsideration of the Commission's grant of Progeny's request for a limited waiver of its five-year construction requirement ("Grant of Progeny's Extension Request"), Progeny's Opposition to that petition, and Havens' Response to the Opposition, all originally filed in a Universal Licensing

System (“ULS”) proceeding on the matter.¹ In filing these pleadings in this docket, WT No. 06-49, Havens professed a belief that these materials contained “principal facts and issues of law”² that pertained to the Commission’s Notice of Proposed Rulemaking (“NPRM”) on rule changes for Multilateration Location and Monitoring Service (“M-LMS”) licensees.³ Havens’ generalized statement that the filing pertains to the NPRM does not, however, support its inclusion into the record. The Commission has already addressed Havens’ arguments presented in the earlier ULS proceeding. In the Grant of Progeny’s Extension Request, the Commission rejected Havens’ claim that Progeny’s Petition for Rulemaking undercut Progeny’s request for the limited waiver (“Progeny’s Extension Request”).⁴ The Commission differentiated Progeny’s Petition for Rulemaking for M-LMS flexibility and Progeny’s Extension Request. The Commission should similarly recognize that the NPRM proceeding and the ULS proceeding are also procedurally

¹ The Commission granted the waiver on May 24, 2006. The pleadings in Havens’ *ex parte* presentation are in response to that grant. *See* Request of Progeny LMS, LLC for a Three-Year Extension of the Five-Year Construction Requirement for its Multilateration Location and Monitoring Services Economic Area Licenses, *Memorandum Opinion and Order*, File Nos. 0002049041-0002049297, rel. May 24, 2006 (*Progeny Construction Extension Request Decision*).

² Havens *Ex Parte* Presentation (filed July 20, 2006) at 1.

³ *Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Notice of Proposed Rulemaking, WT Docket No. 06-49 (rel. March 7, 2006).

⁴ *Progeny Construction Extension Request Decision* ¶ 11.

separate proceedings. This attempt to “forum shop” by shoe horning the same arguments into an unrelated proceeding should be rejected.

Havens’ filing represents yet another attempt, in a series of unfounded attempts, to combine Progeny’s Extension Request with the NPRM, despite the Commission’s ruling that these proceedings are different. Under the Commission’s rules, the Commission should only consider relevant comments and material of record in taking final action.⁵ The Commission should ignore Havens’ latest attempt to inject non-germane material from a different proceeding into the current one.

Havens also mischaracterizes Progeny’s position on location service. Havens proclaims that the current rules allow Progeny to offer all the services it wants to provide,⁶ yet a simple review of Progeny’s filed comments in this docket does not support this contention.

Further, Havens’ filing is procedurally defective. Under the Commission’s rules, any written *ex parte* presentation “must be labeled as an *ex parte* presentation.”⁷ Havens’ filing does not satisfy this regulatory requirement. Under Section 1.1216 (a), the Commission may impose any sanctions that may be appropriate.⁸

⁵ 47 C.F.R. § 1.425.

⁶ Havens *Ex Parte* Presentation (filed July 20, 2006) at 1-2.

⁷ 47 C.F.R. § 1.1206(b)(1).

⁸ 47 C.F.R. § 1.1216(a).

Even though the Commission has rejected Havens' position and granted Progeny's Extension Request, Havens continues to improperly conflate Progeny's Extension Request with this rulemaking concerning regulatory flexibility for M-LMS licensees. Thus, the Commission should disregard Havens' *ex parte* presentation as both procedurally flawed and extraneous to the NPRM proceeding.

Respectfully submitted,

/s/ Janice Obuchowski

Janice Obuchowski
Counsel
Progeny LMS, LLC

August 1, 2006

Certificate of Service

I, Jay Chauhan, hereby certify that I have, on this 1st day of August 2006, placed into the USPS mail system, unless otherwise noted, a copy of the foregoing *Ex Parte Presentation*, with first-class postage prepaid affixed, to the following:

Warren Havens,
Individually and as
President of:
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Berkeley, CA 94704

/s/ Jay Chauhan
Jay Chauhan